

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 90976-001

v

Liberty Union Life Assurance Company
Respondent

Issued and entered
this 16th day of September 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On July 15, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on July 22, 2008.

The Commissioner notified Liberty Union Life Assurance Company (Liberty) of the external review and requested the information used in making its adverse determination.

The issue in this external review can be decided by an analysis of the contract that defines the Petitioner's group health care benefits. The contract is Liberty's "Michigan MedChoices" certificate of coverage (the certificate) and its applicable riders. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

The Petitioner was injured while vacationing in Mexico and received treatment there. Liberty processed the claims as non-network benefits because the providers were not part of Liberty's preferred provider organization (PPO).

The Petitioner appealed through Liberty's internal grievance process. Liberty maintained its denial and issued a final adverse determination dated July 3, 2008.

III ISSUE

Did Liberty correctly process the Petitioner's claims for treatment in Mexico?

IV ANALYSIS

Petitioner's Argument

The Petitioner was injured when she apparently tripped on a speed bump and fell while crossing a street in Cabo San Lucas. She scraped her hands and left elbow and required four stitches in her left knee. The Petitioner says that after she fell she was helped up from the street, placed in a taxicab, and was driven to the resort where she was staying where she was treated by the resort's in-house doctor. She says, "There were NO hospitals or clinics on the way to the resort, or we would've gone there."

The Petitioner paid for the medical treatment and seeks reimbursement from Liberty for her out-of-pocket costs. She says that she did everything that is required when filing a claim. She says she could not go to a PPO provider in Mexico because there were none and therefore she does not think it is fair for Liberty to treat her claims as non-network benefits. She wants Liberty to make an exception and process her claims as network benefits.

Respondent's Argument

Liberty explains that the Petitioner has a \$1,000.00 deductible for non-network services; after the deductible is satisfied, non-network allowed expenses are paid by Liberty at 70%. Since

the Petitioner was treated by a non-network physician, the total charge for medical care (\$436.50) was applied to the non-network deductible, which had not been met.

Liberty says there are only two situations where it will provide network benefits for non-network services: when an insured is admitted to a non-network hospital as an inpatient because of a life-threatening medical emergency or accidental injury; or when a life-threatening illness or injury is treated in an emergency room. Since the Petitioner's care did not come under either of these exceptions, Liberty believes it correctly processed her claims according to the terms and conditions of the certificate.¹

Commissioner's Review

The Petitioner's certificate distinguishes between PPO network providers and non-network providers in determining benefits. It says:

This Policy offers an organized network of preferred doctors and hospitals throughout Michigan who are dedicated to the quality provision of care. When you use Preferred Providers you will receive an economic incentive such as increased benefits. You may, however, use non-network providers, but your out-of-pocket expenses will be greater.

The Petitioner had no opportunity to use a PPO provider when she required medical attention in Mexico – she had no choice but to receive services from a non-network provider. She believes that in that circumstance Liberty should make an exception and treat her claims as network benefits. If covered as network benefits, the Petitioner presumably would have incurred less or no out-of-pocket cost for the care.

It is unfortunate that the Petitioner was not able to use a PPO network provider when she was injured in Mexico. However, nothing in the certificate requires Liberty to make any exception when no network provider is available except for certain services related to medical emergencies as defined in the certificate and treated at a hospital as an inpatient or in the ER. The Commissioner

1. A separate charge of \$48.61 for medicines and supplies was processed as allowed under the Petitioner's prescription drug benefit.

recognizes that an injury requiring stitches requires medical treatment. However, even though the Petitioner said in her request for external review that she received “emergency medical treatment” in Mexico, she was not treated in an emergency room and the record does not support a finding that the care she received met the certificate’s definition of “medical emergency.”

Liberty also noted that the Petitioner was also not able to use her personal care account (PCA) to cover any of her expenses. The PCA, a feature of her group’s high-deductible plan, pays first dollar benefits on certain covered services before the deductible applies. However, the PCA rider is clear that the PCA pays only for services from PPO providers.

After reviewing the entire record, the Commissioner concludes that Liberty correctly processed the Petitioner’s claims from the care she received in Mexico according to the terms and conditions of the certificate.

V ORDER

The Commissioner upholds Liberty Union Life Assurance Company’s adverse determination of July 3, 2008. Liberty Union is not required to cover the Petitioner’s treatment in Mexico at the network level of benefits.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.